

**Introduced by Senator Wright**

January 11, 2012

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An act to amend Sections 13263, 13269, and 13377 of the Water Code, relating to water quality.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 965, as introduced, Wright. State Water Resources Control Board and California regional water quality control boards: Administrative Procedure Act.

Existing law establishes the State Water Resources Control Board and the California regional water quality control boards and authorizes them to adopt regulations to carry out their powers and duties and to conduct administrative adjudicative proceedings. The Administrative Procedure Act establishes the conduct of administrative adjudicative proceedings, which are defined as evidentiary hearings for determination of facts pursuant to which a state agency formulates and issues a decision. Existing law defines a decision as an agency action of specific application that determines a legal right, duty, privilege, immunity, or other legal interest of a particular person.

This bill would establish that the issuance, denial, or revocation of certain waste discharge requirements, permits, or waivers by the State Water Resources Control Board and the California regional water quality boards that apply statewide, regionwide, or industrywide, and not to a person, as defined, are not within the meaning of a decision, as defined under the Administrative Procedure Act.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 13263 of the Water Code is amended to read:

13263. (a) The regional board, after any necessary hearing, shall prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system, with relation to the conditions existing in the disposal area or receiving waters upon, or into which, the discharge is made or proposed. The requirements shall implement any relevant water quality control plans that have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241.

(b) A regional board, in prescribing requirements, need not authorize the utilization of the full waste assimilation capacities of the receiving waters.

(c) The requirements may contain a time schedule, subject to revision in the discretion of the board.

(d) The regional board may prescribe requirements although no discharge report has been filed.

(e) Upon application by any affected person, or on its own motion, the regional board may review and revise requirements. All requirements shall be reviewed periodically.

(f) The regional board shall notify in writing the person making or proposing the discharge or the change therein of the discharge requirements to be met. After receipt of the notice, the person so notified shall provide adequate means to meet the requirements.

(g) No discharge of waste into the waters of the state, whether or not the discharge is made pursuant to waste discharge requirements, shall create a vested right to continue the discharge. All discharges of waste into waters of the state are privileges, not rights.

(h) The regional board may incorporate the requirements prescribed pursuant to this section into a master recycling permit for either a supplier or distributor, or both, of recycled water.

(i) The state board or a regional board may prescribe general waste discharge requirements for a category of discharges if the

1 state board or that regional board finds or determines that all of  
2 the following criteria apply to the discharges in that category:

3 (1) The discharges are produced by the same or similar  
4 operations.

5 (2) The discharges involve the same or similar types of waste.

6 (3) The discharges require the same or similar treatment  
7 standards.

8 (4) The discharges are more appropriately regulated under  
9 general discharge requirements than individual discharge  
10 requirements.

11 (j) The state board, after any necessary hearing, may prescribe  
12 waste discharge requirements in accordance with this section.

13 *(k) The issuance, denial, or revocation of waste discharge*  
14 *requirements pursuant to this section that apply statewide,*  
15 *regionwide, or industrywide, and not to a person, as defined in*  
16 *Section 11405.70 of the Government Code, are not within the*  
17 *meaning of a decision, as defined in Section 11405.50 of the*  
18 *Government Code.*

19 SEC. 2. Section 13269 of the Water Code is amended to read:

20 13269. (a) (1) On and after January 1, 2000, the provisions  
21 of subdivisions (a) and (c) of Section 13260, subdivision (a) of  
22 Section 13263, or subdivision (a) of Section 13264 may be waived  
23 by the state board or a regional board as to a specific discharge or  
24 type of discharge if the state board or a regional board determines,  
25 after any necessary state board or regional board meeting, that the  
26 waiver is consistent with any applicable state or regional water  
27 quality control plan and is in the public interest. The state board  
28 or a regional board shall give notice of any necessary meeting by  
29 publication pursuant to Section 11125 of the Government Code.

30 (2) A waiver may not exceed five years in duration, but may be  
31 renewed by the state board or a regional board. The waiver shall  
32 be conditional and may be terminated at any time by the state board  
33 or a regional board. The conditions of the waiver shall include,  
34 but need not be limited to, the performance of individual, group,  
35 or watershed-based monitoring, except as provided in paragraph  
36 (3). Monitoring requirements shall be designed to support the  
37 development and implementation of the waiver program, including,  
38 but not limited to, verifying the adequacy and effectiveness of the  
39 waiver's conditions. In establishing monitoring requirements, the  
40 regional board may consider the volume, duration, frequency, and

1 constituents of the discharge; the extent and type of existing  
2 monitoring activities, including, but not limited to, existing  
3 watershed-based, compliance, and effectiveness monitoring efforts;  
4 the size of the project area; and other relevant factors. Monitoring  
5 results shall be made available to the public.

6 (3) The state board or a regional board may waive the  
7 monitoring requirements described in this subdivision for  
8 discharges that it determines do not pose a significant threat to  
9 water quality.

10 (4) (A) The state board or a regional board may include as a  
11 condition of a waiver the payment of an annual fee established by  
12 the state board in accordance with subdivision (f) of Section 13260.

13 (B) Funds generated by the payment of the fee shall be deposited  
14 in the Waste Discharge Permit Fund for expenditure, upon  
15 appropriation by the Legislature, by the state board or appropriate  
16 regional board for the purpose of carrying out activities limited to  
17 those necessary to establish and implement the waiver program  
18 pursuant to this section. The total amount of annual fees collected  
19 pursuant to this section shall not exceed the costs of those activities  
20 necessary to establish and implement waivers of waste discharge  
21 requirements pursuant to this section.

22 (C) In establishing the amount of a fee that may be imposed on  
23 irrigated agriculture operations pursuant to this section, the state  
24 board shall consider relevant factors, including, but not limited to,  
25 all of the following:

26 (i) The size of the operations.

27 (ii) Any compliance costs borne by the operations pursuant to  
28 state and federal water quality regulations.

29 (iii) Any costs associated with water quality monitoring  
30 performed or funded by the operations.

31 (iv) Participation in a watershed management program approved  
32 by the applicable regional board.

33 (D) In establishing the amount of a fee that may be imposed on  
34 silviculture operations pursuant to this section, the state board shall  
35 consider relevant factors, including, but not limited to, all of the  
36 following:

37 (i) The size of the operations.

38 (ii) Any compliance costs borne by the operations pursuant to  
39 state and federal water quality regulations.

1 (iii) Any costs associated with water quality monitoring  
2 performed or funded by the operations.

3 (iv) The average annual number of timber harvest plans  
4 proposed by the operations.

5 (5) The state board or a regional board shall give notice of the  
6 adoption of a waiver by publication within the affected county or  
7 counties as set forth in Section 6061 of the Government Code.

8 (b) (1) A waiver in effect on January 1, 2000, shall remain valid  
9 until January 1, 2003, unless the regional board terminates that  
10 waiver prior to that date. All waivers that were valid on January  
11 1, 2000, and granted an extension until January 1, 2003, and not  
12 otherwise terminated, may be renewed by a regional board in  
13 five-year increments.

14 (2) Notwithstanding paragraph (1), a waiver for an onsite sewage  
15 treatment system that is in effect on January 1, 2002, shall remain  
16 valid until June 30, 2004, unless the regional board terminates the  
17 waiver prior to that date. Any waiver for onsite sewage treatment  
18 systems adopted or renewed after June 30, 2004, shall be consistent  
19 with the applicable regulations or standards for onsite sewage  
20 treatment systems adopted or retained in accordance with Section  
21 13291.

22 (c) Upon notification of the appropriate regional board of the  
23 discharge or proposed discharge, except as provided in subdivision  
24 (d), the provisions of subdivisions (a) and (c) of Section 13260,  
25 subdivision (a) of Section 13263, and subdivision (a) of Section  
26 13264 do not apply to a discharge resulting from any of the  
27 following emergency activities:

28 (1) Immediate emergency work necessary to protect life or  
29 property or immediate emergency repairs to public service facilities  
30 necessary to maintain service as a result of a disaster in a  
31 disaster-stricken area in which a state of emergency has been  
32 proclaimed by the Governor pursuant to Chapter 7 (commencing  
33 with Section 8550) of Division 1 of Title 2 of the Government  
34 Code.

35 (2) Emergency projects undertaken, carried out, or approved  
36 by a public agency to maintain, repair, or restore an existing  
37 highway, as defined in Section 360 of the Vehicle Code, except  
38 for a highway designated as an official state scenic highway  
39 pursuant to Section 262 of the Streets and Highways Code, within  
40 the existing right-of-way of the highway, damaged as a result of

1 fire, flood, storm, earthquake, land subsidence, gradual earth  
2 movement, or landslide within one year of the damage. This  
3 paragraph does not exempt from this section any project  
4 undertaken, carried out, or approved by a public agency to expand  
5 or widen a highway damaged by fire, flood, storm, earthquake,  
6 land subsidence, gradual earth movement, or landslide.

7 (d) Subdivision (c) is not a limitation of the authority of a  
8 regional board under subdivision (a) to determine that any  
9 provision of this division shall not be waived or to establish  
10 conditions of a waiver. Subdivision (c) shall not apply to the extent  
11 that it is inconsistent with any waiver or other order or prohibition  
12 issued under this division.

13 (e) The regional boards and the state board shall require  
14 compliance with the conditions pursuant to which waivers are  
15 granted under this section.

16 (f) Prior to renewing any waiver for a specific type of discharge  
17 established under this section, the state board or a regional board  
18 shall review the terms of the waiver policy at a public hearing. At  
19 the hearing, the state board or a regional board shall determine  
20 whether the discharge for which the waiver policy was established  
21 should be subject to general or individual waste discharge  
22 requirements.

23 (g) *The issuance, denial, or revocation of a waiver or waste*  
24 *discharge requirements pursuant to this section that apply*  
25 *statewide, regionwide, or industrywide, and not to a person, as*  
26 *defined in Section 11405.70 of the Government Code, are not*  
27 *within the meaning of a decision, as defined in Section 11405.50*  
28 *of the Government Code.*

29 SEC. 3. Section 13377 of the Water Code is amended to read:

30 13377. (a) Notwithstanding any other provision of this  
31 division, the state board or the regional boards shall, as required  
32 or authorized by the Federal Water Pollution Control Act, as  
33 amended, issue waste discharge requirements and dredged or fill  
34 material permits which apply and ensure compliance with all  
35 applicable provisions of the act and acts amendatory thereof or  
36 supplementary, thereto, together with any more stringent effluent  
37 standards or limitations necessary to implement water quality  
38 control plans, or for the protection of beneficial uses, or to prevent  
39 nuisance.

1     ***(b) The issuance, denial, or revocation of waste discharge***  
2     ***requirements or permits pursuant to this section that apply***  
3     ***statewide, regionwide, or industrywide, and not to a person, as***  
4     ***defined in Section 11405.70 of the Government Code, are not***  
5     ***within the meaning of a decision, as defined in Section 11405.50***  
6     ***of the Government Code.***

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